

**UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

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| DARYL AND JACQUELINE FORTH, | USDC Case No. |
| Plaintiffs, | Judge |
| v. | Magistrate Judge |
| THE BANK OF NEW YORK MELLON CORPORATION, | Lower Court Case No. 21-000039-CH |
| Defendant. | |

NOTICE OF FILING REMOVAL

NOTICE OF REMOVAL TO FEDERAL COURT

VERIFICATION

CERTIFICATE OF SERVICE

**UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

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| DARYL AND JACQUELINE FORTH, | USDC Case No. |
| Plaintiffs, | Judge |
| v. | Magistrate Judge |
| THE BANK OF NEW YORK MELLON CORPORATION, | Lower Court Case No. 21-000039-CH |
| Defendant. | |

NOTICE OF FILING REMOVAL

TO: CLERK OF THE COURT
Macomb County Circuit Court for the State of Michigan
Brian P. Parker, Esq., counsel for Plaintiffs

Defendant, The Bank of New York Mellon fka The Bank of New York, as successor Trustee to JPMorgan Chase Bank, N.A., as Trustee for the Certificateholders of CWABS Master Trust, Revolving Home Equity Loan Asset Backed Notes, Series 2004-L (“BONY”), improperly captioned as The Bank of New York Mellon Corporation, through its attorneys, Plunkett Cooney, and pursuant to 28 USC § 1441 *et seq.*, hereby provides notice to the Clerk of the Macomb County Circuit Court for the State of Michigan of the removal of this case to the United States District Court for the Eastern District of Michigan, Southern Division.

Respectfully submitted,

PLUNKETT COONEY

By: /s/ Marc P. Jerabek
Marc P. Jerabek (P65856)
Attorney for Defendant BONY
38505 Woodward Ave., Ste. 100
Bloomfield Hills, MI 48304
(248) 901-4016
mjerabek@plunkettcooney.com

Dated: February 16, 2021

**UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

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| DARYL AND JACQUELINE FORTH, | USDC Case No. |
| Plaintiffs, | Judge |
| v. | Magistrate Judge |
| THE BANK OF NEW YORK MELLON CORPORATION, | Lower Court Case No. 21-000039-CH |
| Defendant. | |

NOTICE OF REMOVAL TO FEDERAL COURT

TO: HONORABLE JUDGES OF THE U.S. DISTRICT COURT
Eastern District of Michigan, Southern Division
Brian P. Parker, Esq., counsel for Plaintiffs

Defendant, The Bank of New York Mellon fka The Bank of New York, as successor Trustee to JPMorgan Chase Bank, N.A., as Trustee for the Certificateholders of CWABS Master Trust, Revolving Home Equity Loan Asset Backed Notes, Series 2004-L ("BONY"), improperly captioned as The Bank of New York Mellon Corporation, through its attorneys, Plunkett Cooney, and pursuant to 28 USC § 1441 *et seq.*, removes this action from the Macomb County Circuit Court for the State of Michigan, Case No. 20-0039-CH, to the United States District Court for the Eastern District of Michigan, Southern Division. In support of this Removal, BONY states:

PROCEDURAL BACKGROUND AND GROUNDS FOR REMOVAL

1. On or about January 4, 2021, Plaintiffs, Daryl Forth and Jacqueline Forth (“Plaintiffs”), commenced this action in the Macomb County Circuit Court of Michigan by filing their Complaint (“Complaint”) and causing a Summons to be issued. *See, Exhibit A – Summons and Complaint.*

2. BONY received a copy of the Summons and Complaint on or about January 19, 2021.

3. The Summons and Complaint constitute all pleadings and papers BONY received regarding this lawsuit and, upon information and belief, and according to the Register of Actions for the Macomb County Circuit Court, no additional papers were filed in the Macomb County Circuit Court. *See, Exhibit B – Register of Actions in Macomb County Circuit Court.*

4. This Notice of Removal is timely pursuant to 28 USC § 1446(b) because it is filed within 30 days of receiving notice of the action.

5. This Court is in the district and division “embracing the place where [the State Court] action is pending.” 28 USC § 1441(a). The Macomb County Circuit Court is located in the Eastern District of Michigan.

DIVERSITY JURISDICTION

6. This action is removable to this Court under original diversity jurisdiction pursuant to 28 USC §1332(a) because the amount in controversy

exceeds the sum or value of \$75,000, exclusive of interest, costs, and attorneys' fees, and this action is between citizens of different states, as demonstrated more fully below:

A. **Plaintiffs Are Citizens Of Michigan:** For purposes of diversity jurisdiction, a person is a citizen of the state in which he or she is domiciled. *See, Newman-Green, Inc v Alfonzo-Larrain*, 490 US 826, 828 (1989). “[D]omicile is established by physical presence in a place in connection with a certain state of mind concerning one’s intent to remain there.” *Mississippi Band of Choctaw Indians v Holyfield*, 490 US 30, 48 (1989). Upon information and belief, Plaintiffs are domiciled in, and are citizens of the State of Michigan. Specifically, in their Complaint, Plaintiffs allege that they own a home and property located at 17109 Cross Creek Court, Macomb, MI 48044 (the “Property”), which is in Macomb County, Michigan. *See, Exhibit A, Complaint ¶1*. Plaintiffs do not allege that they have any intention to leave Michigan. *Id.*, generally. Therefore, for diversity purposes, Plaintiffs are domiciled in and are citizens of the State of Michigan.

B. **BONY Is A Citizen of New York and Delaware:** For purposes of diversity jurisdiction “a trust is a citizen of whatever state the trustee is a citizen of.” *Arvest Bank v Byrd*, No. 10-2004, 2011 US Dist

LEXIS 96570, at *7 (WD Tenn Aug 26, 2011), *citing May Dep't Stores Co v Fed Ins Co*, 305 F3d 597, 599 (7th Cir 2002); *Homfeld II, LLC v Comair Holdings, Inc*, 53 F App'x 731, 732 (6th Cir 2002); *Gen Ret Sys of the City of Detroit v UBS AG*, No. 10-CV-13920, 2010 US Dist LEXIS 134653, at *4 (ED Mich Dec 20, 2010). BONY is a Delaware corporation with its principal place of business in New York. BONY is not and has never been a citizen of the State of Michigan, within the meaning of 28 USC § 1332(c). “For purposes of determining diversity jurisdiction, a corporation can be a citizen of two states: (1) its state of incorporation; and (2) the state of its principal place of business.” *Freeman v Unisys Corp*, 870 F Supp 169, 172 (ED Mich 1994) (citing 28 USC § 1332(c)). Therefore, BONY is a citizen of Delaware and New York for diversity purposes.

7. Accordingly, complete diversity exists because Plaintiffs are citizens of Michigan and BONY is a citizen of New York and Delaware.

8. Pursuant to LR 81.1(a) and (b) and 28 USC § 1332(a), the amount in controversy appears to exceed the sum or value of \$75,000.00, exclusive of interest, costs, and attorney fees for the following reasons:

A. In the Complaint, Plaintiffs seek, among other things, an order quieting title of the Property, free and clear of the second/junior mortgage, with an original face amount of \$89,000 (the “Mortgage”), and

BONY's interest in the Property. *See, Exhibit A – Complaint, ¶32 and Prayer for Relief.*

B. When a plaintiff seeks declaratory or injunctive relief, the amount in controversy is measured by “the value of the object that is the subject matter of the action.” *Lorimer ex rel Estate of Lorimer v Berrelez*, 331 F Supp 2d 585, 591 (ED Mich 2004) (citations omitted); *see also, Cohn v Petsmart*, 281 F3d 837, 840 (9th Cir 2002) (citing *Hunt v Wash State Apple Adver Comm’n*, 432 US 333, 347 (1977)) (holding “[i]n actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation.”); *Nordica SPA v Icon Health & Fitness, Inc*, 2009 US Dist LEXIS 71385, *6 n 4 (D NH 2009) (citing *Lee Sch Lofts, LLC v Amtax Holdings 106 LLC*, 2008 WL 4936479, at *3 (ED Va Oct 29, 2008)) (observing “[w]hen specific performance is the desired remedy, the amount in controversy requirement is satisfied if ‘either the “direct pecuniary value” of the right the plaintiff seeks to enforce ... or the cost to the defendant of complying with any prospective equitable relief exceeds \$75,000.”); *Neely v Consol Inc*, 25 Fed App’x 394, 400 (6th Cir 2002) (holding amount in controversy was equal to amount of lease).

C. Here, Plaintiffs seek, among other things, to discharge, extinguish, or otherwise invalidate the Mortgage and prevent BONY from exercising any of its rights thereunder. The Mortgage secures a home equity line of credit with a maximum credit line of \$89,000 (the “Loan,” together with the Mortgage, the “Mortgage Loan”). As of January 11, 2021, the amount due under the Loan was \$92,142.16. Because the original/maximum principal amount of the Loan secured by the Mortgage was \$89,000 and the Loan balance in January 2021 exceeded \$92,000, both amounts in excess of \$75,000, the amount in controversy has been satisfied. *See, Exhibit C – Mortgage; Exhibit D – Loan; and Exhibit E – January 2021 Account Statement for the Mortgage Loan.*

D. Although BONY denies the allegations in Plaintiffs’ Complaint and denies any liability to Plaintiffs, if Plaintiffs’ allegations are proven to be true, the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest, costs, and attorneys’ fees.

9. A Notice of Filing Notice of Removal and a copy of this Notice of Removal will be filed with the Macomb County Circuit Court as required by 28 USC § 1446(d) and copies of the same will be served upon Plaintiffs.

10. Based upon the foregoing, BONY is entitled to remove this action to this Court under 28 USC § 1332, *et seq.*

11. In filing this Notice of Removal, BONY does not waive any defenses that may be available to it.

WHEREFORE, BONY requests this Court take jurisdiction over this matter and grant such other relief as the Court deems proper.

Respectfully submitted,

PLUNKETT COONEY

By: /s/ Marc P. Jerabek
Marc P. Jerabek (P65856)
Attorney for Defendant BONY
38505 Woodward Ave., Ste. 100
Bloomfield Hills, MI 48304
(248) 901-4016
mjerabek@plunkettcooney.com

Dated: February 16, 2021

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2021, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, and I hereby certify that I have mailed by first-class U.S. Mail, with postage fully prepaid, the same to:

Brian P. Parker, Esq.
4301 Orchard Lake Road, #180-208
West Bloomfield, MI 48323

/s/ Marc P. Jerabek

**UNITED STATES DISTRICT COURT
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| Plaintiffs, | Judge |
| v. | Magistrate Judge |
| THE BANK OF NEW YORK MELLON CORPORATION, | Lower Court Case No. 21-000039-CH |
| Defendant. | |

VERIFICATION

Marc P. Jerabek, first being duly sworn, states that he is the attorney for Defendant, The Bank of New York Mellon fka The Bank of New York, as successor Trustee to JPMorgan Chase Bank, N.A., as Trustee for the Certificateholders of CWABS Master Trust, Revolving Home Equity Loan Asset Backed Notes, Series 2004-L ("BONY"), improperly captioned as The Bank of New York Mellon Corporation, and that the foregoing Notice of Removal is true in substance and in fact to the best of his knowledge, information and belief.

Respectfully submitted,

PLUNKETT COONEY

By: /s/ Marc P. Jerabek

Marc P. Jerabek (P65856)
Attorney for Defendant BONY
38505 Woodward Ave., Ste. 100
Bloomfield Hills, MI 48304
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Dated: February 16, 2021

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Plaintiffs,

v.

THE BANK OF NEW YORK MELLON
CORPORATION,

Defendant.

USDC Case No.

Judge

Magistrate Judge

Lower Court Case No. 21-000039-CH

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2021, I electronically filed the foregoing Removal package with the Clerk of the Court using the ECF system and that I have mailed by United States Postal Service to any parties that are not ECF participants.

Respectfully submitted,

PLUNKETT COONEY

By: /s/ Marc P. Jerabek
Marc P. Jerabek (P65856)
Attorney for Defendant BONY
38505 Woodward Ave., Ste. 100
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Dated: February 16, 2021

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